

### **Remarks**

Claims 3, 5, 6, 17, 27, 30-35 and 40 have been withdrawn from consideration and claims 1, 2, 4, 7-16, 18, 36-39, 41, 42, and 47 have been canceled. Claims 51-53 have been indicated allowable. Claims 19-26, 28, 29, 43-46, and 48-50 are therefore at issue.

Claims 24-26 have been indicated allowable if rewritten to overcome rejections under 35 U.S.C § 112, ¶ 2. It is respectfully contended that the subject matter forming the basis for the § 112 rejection has been addressed in the amendments to claim 24 presented herein, and hence, this rejection is traversed. Claims 48-50 have been objected to as being dependent upon a rejected base claim, but otherwise allowable if rewritten in independent form. These claims would be rewritten in independent form at a later date should such action become necessary.

Applicants traverse the rejection of claims 19-21, 28, 29, 43, and 44 as anticipated by Flock. Still further, applicants traverse the rejection of claims 22, 23, 45, and 46 as obvious over Flock.

Independent claim 19, and claims 20-23, 28, and 29 dependent thereon, specify an actuator cap including a main wall that extends generally along an axial dimension thereof and has a varying cross-sectional size. An actuator member extends transversely to the axial dimension and terminates at an outer peripheral surface wherein the outer peripheral surface extends laterally beyond a portion of the main wall but does not extend beyond a greatest lateral extent of the main wall. An upright portion that has a curved outer surface is disposed adjacent the actuator member. The curved outer surface is engageable with an internal surface of a housing to guide the actuator member and prevent inadvertent actuation of the actuator member. The housing is spaced outwardly from the main wall when the actuator is placed in the housing.

Independent claim 43, and claims 44-46 dependent thereon, recite an actuator cap including a main wall that extends generally along an axial dimension thereof and has a varying cross-sectional size. An actuator member extends transversely to the axial dimension and terminates at an outer peripheral surface wherein the outer peripheral surface extends laterally beyond a portion of the main wall but does not extend beyond a greatest lateral extent of the main wall. An upright portion that has a curved outer surface is disposed adjacent the actuator member, wherein the curved outer surface prevents inadvertent

actuation of the actuator member and the upright portion includes an arcuate gusset on an internal surface thereof.

Flock does not disclose or suggest an actuator cap including an upright portion having a curved outer surface that is disposed adjacent an actuator member, wherein the curved outer surface is engageable with an internal surface of a housing to guide the actuator member and prevent inadvertent actuation of the actuator member, as recited by claims 19-23, 28, and 29 of the present application. Further, Flock does not disclose or suggest an actuator cap including an upright portion having a curved outer surface that prevents inadvertent actuation of an actuator member and an arcuate gusset on an internal surface of the upright portion, as recited by claims 43-46 of the present application.

In fact, Flock discloses a fluid dispensing device including an upper housing 13 defined by a pair of opposed sidewalls 14, a top wall 16, and a bottom wall 17. A laterally extending latch operator 48B extends through a slotted opening 49 in a front wall 15 of the housing 13. A reservoir 25 that is adapted to contain a supply of fluid is disposed in an inverted position within a well 22 that is formed in the top wall 16. The reservoir 25 has a threaded neck portion 27 that defines a mouth opening 28. An open grid plate 34 is disposed across the mouth opening 24. A stopper 29 having a threaded skirt 30 at a proximal end thereof is screwed onto the neck portion 27 and an opening 31 is provided at a distal end of the stopper 29. A bracket 35 including a pair of vertically spaced plates 36 and 37 is provided within the housing 13. An opening 36A in the plate 36 is positioned to receive the distal end of the stopper 29.

A spring 33 disposed between a ball valve 32 and the grid plate 34 urges the ball valve 32 to maintain the opening 31 in a normally closed position (FIG. 3). A receiving container 40 having tubular sidewalls 40A and a bottom wall 40B is disposed within the bracket 35. The bottom wall 40B has a dispensing opening 41 disposed therein. The dispensing opening 41 is aligned with the opening 31 of the stopper 29, an opening 37A in the plate 37, and an opening 17A in the bottom wall 17. A valve actuator 55 including a shaft 56 is loosely supported within the receiving container 40 in an upright position by suitable guide supports 57 that are fixed to the walls of the container 40. A plunger 58 is connected to an upper end of the actuator shaft 56 and adapted to engage the ball valve 32 in an operative position. Further, a conical valve member 59 is connected to a bottom end of the valve for controlling the dispensing opening 41 in the bottom of the receiving container 40.

A spring biased sear 45 (FIG. 3) is pivotally mounted about a hinge pin 46 to the plate 36. A first end of a latch member 48 that has a hook portion 48A is connected to the cup and a second end of the latch member 48 is connected to the laterally extending latch operator 48B. In operation, the receiving container 40 is raised from the inoperative position (FIG. 3) to an operative position (FIG. 2) by exerting an upward force on the latch operator 48B until the hook portion 48A latches an upper edge of the sear 45. The upward displacement of the receiving container causes fluid in the reservoir 25 to flow through the opening 31 into the receiving container 30. A heater means 52 disposed within the receiving cup 40 heats the fluid until a bi-metal strip thermostatic element 62 determines that the fluid has been heated to a predetermined temperature, whereupon the expansion of a free end 62B of the thermostatic element 62 pivots the sear 45 in a counter clockwise direction to release the latch hook 48A. The weight of the fluid in the container 40 causes the container 40 to be displaced to the bottom of the bracket 35. However, a down stop 60 limits the downward travel of the actuator 55 and the valve member 59, thereby allowing the fluid to be dispensed through the openings 41 and 17A.

The actuator member 55 shown in Flock does not prevent inadvertent actuation of the fluid dispensing device disclosed by Flock. In addition, the spaced plate 36 is not an upright member as recited in the pending claims. Rather, the spaced plate 36 is provided to support the stopper 29 that is screwed onto the reservoir 25.

A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. *Schering Corp. v. Geneva Pharms., Inc.* 339 F.3d 1373, 1379 (Fed. Cir. 2003). Flock does not show each and every element as set forth in claims 19-21, 28, 29, 43, and 44. Therefore, it follows that such claims are not anticipated by Flock.

In addition, Flock does not disclose or suggest the subject matter of claims 19-23, 28, 29, and 43-46, or that it would even be desirable to incorporate the subject matter of such claims in the device disclosed by Flock. To support a *prima facie* case of obviousness, an examiner must establish a finding that the prior art included each element claimed, although not necessarily in a single prior art reference ....” Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of Supreme Court Decision in *KSR International Co. v. Teleflex Inc.* 72 Fed. Reg. 57,526 (Oct. 10, 2007). Therefore, it follows that claims 19-23, 28, 29, and 43-46 are not obvious over Flock.

Reconsideration and allowance of the foregoing claims are respectfully requested. The examiner is encouraged to call the undersigned attorney to discuss the pending claims for the purpose of expediting this prosecution.


**Deposit Account Authorization**

The Commissioner is hereby authorized to charge any deficiency in any amount enclosed or any additional fees which may be required during the pendency of this application under 37 CFR 1.16 or 1.17, except issue fees, to Deposit Account No. 50-1903.

Respectfully submitted,

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June 19, 2008

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